

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 154 and 155

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[Docket No. USCG-2010-0592; EPA-HQ-OPA-2010-0559]

RIN 1625-AB49; 2050-AG63

Temporary Suspension of Certain Oil Spill Response Time
Requirements to Support Deepwater Horizon Oil Spill of National
Significance (SONS) Response.

AGENCIES: Coast Guard, DHS, and Environmental Protection
Agency.

ACTION: Emergency temporary interim rule.

SUMMARY: This joint Coast Guard and Environmental Protection
Agency (EPA) temporary interim rule will suspend oil spill
response time requirements, and certain identification and
location requirements, for facilities and vessels whose response
resources are relocated in support of the Deepwater Horizon SONS
response. By providing oil spill removal organizations (OSROs),
and facilities and vessels with their own response resources,
with the temporary opportunity to relocate response resources

from current locations to the Gulf of Mexico, this rule directly assists in the urgently needed immediate relocation of nationwide oil spill response resources to the Gulf of Mexico to aid in the response to the Deepwater Horizon SONS. The rule also provides notice that the Federal On-Scene Coordinator for the Deepwater Horizon SONS has requested the Armed Forces to relocate Armed Forces oil spill response resources, in particular those of the Navy, from their current locations to the Gulf of Mexico to aid in the response to the Deepwater Horizon SONS.

DATES: Effective Date: This rule is effective from [INSERT DATE OF PUBLICATION] through December 31, 2010.

Comment Period: Comments and related material must reach the Coast Guard or EPA at the ADDRESSES listed below on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION OF THIS RULE].

ADDRESSES: You may submit comments identified by docket number USCG-2010-0592; EPA-HQ-OPA-2010-0559 using any one of the following methods:

- Federal eRulemaking Portal:
<http://www.regulations.gov>.
- Fax: Coast Guard, 202-493-2251; EPA, 202-566-9744,
Attention Docket ID No. EPA-HQ-OPA-2010-0559.
- Mail: Coast Guard, Docket Management Facility (M-30),
U.S. Department of Transportation, West Building

Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. EPA, EPA Docket Center (EPA/DC), Docket ID No. EPA-HQ-OPA-2010-0559, Mail Code 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

- Hand delivery: Coast Guard, same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. EPA, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-OPA-2010-0559. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

To avoid duplication, please use only one of these four methods. See the ``Public Participation and Request for Comments`` portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of dockets USCG-2010-0592 and EPA-HQ-OPA-2010-0559 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0592 or EPA-HQ-OPA-2010-0559 in the "Keyword" box, and then clicking "Search."

They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; and EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460, Public Reading Room, between 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA Docket Center Public Reading Room is 202-566-1744, and the telephone number to make an appointment to view the docket is 202-566-0276.

EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail:

Coast Guard: (Facilities) Mr. David Condino, Ports and Facilities Division, Coast Guard, telephone 202-372-1145, e-mail David.A.Condino@uscg.mil; (Vessels) LCDR Ryan Allain, Office of

Vessel Activities, Coast Guard, telephone 202-372-1226, e-mail Ryan.D.Allain@uscg.mil. If you have questions on viewing the USCG-2010-0952 docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

EPA: Troy Swackhammer, U.S. Environmental Protection Agency, telephone 202-564-1966, e-mail swackhammer.j-troy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials on this rule and on the environmental effects of this rule on the Gulf of Mexico and on the areas from which response resources could be deployed. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket numbers for this rulemaking (USCG-2010-0592; EPA-HQ-OPA-2010-0559), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit

a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard and EPA when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered received by the Coast Guard and EPA when it is received at either the Docket Management Facility or the EPA Docket Center. We recommend that you include your name and mailing address, e-mail address, or telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the ``submit a comment`` box, which will then become highlighted in blue. In the ``Document Type`` drop down menu select ``Proposed Rule`` and insert ``USCG-2010-0592`` or "EPA-HQ-OPA-2010-0559" in the ``Keyword`` box. Click ``Search`` then click on the balloon shape in the ``Actions`` column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the ``read comments`` box, which will then become highlighted in blue. In the ``Keyword`` box insert ``USCG-2010-0592`` or ``EPA-HQ-OPA-2010-0559`` and click ``Search.`` Click the ``Open Docket Folder`` in the ``Actions`` column. You may also visit: the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays (the Coast Guard has an agreement with the Department of Transportation to use the Docket Management Facility); or the EPA Docket Center Public Reading Room in Room 3334 of the EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20460, between 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of the dockets in www.regulations.gov by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding Coast Guard public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

II. Abbreviations

AMPD	Average Most Probable Discharge
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
EPA	Environmental Protection Agency
FOSC	Federal On-Scene Coordinator
FR	Federal Register
MMPD	Maximum Most Probable Discharge
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
OSRO	Oil Spill Removal Organizations
RFA	Regulatory Flexibility Act
SONS	Spill of National Significance
U.S.C.	United States Code
WCD	Worst Case Discharge

III. Regulatory Information

The Coast Guard and the Environmental Protection Agency (EPA) are issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard and EPA find that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and

contrary to public interest to do so for the reasons set forth in the following paragraphs.

This temporary interim rule is part of the response to the explosion and sinking of the Mobile Offshore Drilling Unit "Deepwater Horizon" on April 20, 2010, causing an unprecedented crude oil discharge, which is a Spill of National Significance (SONS). Large quantities of oil continue to discharge into the waters of the Gulf of Mexico. Also recently, the Federal On-Scene Coordinator (FOSC) for the Deepwater Horizon SONS determined, after working with the appropriate Federal agencies, that an adequate number of available U.S. oil spill response vessels capable of skimming oil cannot be employed in a timely manner to recover the oil released from the Deepwater Horizon SONS. (Memorandum from Rear Admiral J. A. Watson, FOSC BP Deepwater Horizon Oil Spill, to National Incident Command (June 16, 2010), available in the docket).

This temporary interim rule provides, in light of these exigent circumstances, oil spill removal organizations (OSROs) and facilities and vessels with their own response resources that are deploying response resources in support of the response to the Deepwater Horizon SONS, with the opportunity to relocate additional response resources from their current locations to the Gulf of Mexico region to aid in the response to the Deepwater Horizon SONS.

This rule also confirms that the FOSC for the Deepwater Horizon SONS has requested that the Armed Forces relocate response resources, in particular those of the Navy, from their current locations within the continental United States to the Gulf of Mexico to aid in the response to the Deepwater Horizon SONS. This temporary rule is necessary to immediately relieve facilities and vessels from current regulatory requirements that would hinder OSROs, and facilities and vessels with response resources, in their opportunity to participate in the Deepwater Horizon SONS response.

This rule is also necessary to facilitate any incorporation of Armed Forces response resources into cascade plans with private facilities and OSROs. A cascade plan contains a strategy to maximize arrival times and the availability of response resources for plan holders when identified response resources are being used to respond to another facility's or vessel's incident. OSRO's often contract their response resources to multiple facilities and vessels given the unlikelihood of the need to respond to simultaneous incidents among their clients. To account for the unlikely event of simultaneous incidents, OSROs utilize cascade plans to ensure each of their clients will have the necessary response resources and meet Coast Guard and EPA regulatory response time requirements, and EPA response equipment identification and

location requirements. This strategy may include the identification of secondary resources, or backfilling resources that can be accessed through cooperative agreements as needed (cascading resources), through increased partnerships and the increased pooling of resources among several OSROs and other stakeholders.

Publishing an NPRM is impractical because of the ongoing environmental and public health emergency created by the unprecedented release of oil from the Deepwater Horizon SONS, and the environmental damage which would occur during any delay in making this rule effective, including any time devoted to any comment period. In addition, publishing an NPRM is contrary to the public interest of addressing the ongoing environmental and public health emergency and minimizing environmental damage as quickly as possible in response to this situation.

Under 5 U.S.C. 553(d)(3), the Coast Guard and EPA find that good cause exists for making this rule effective fewer than 30 days after publication in the Federal Register for the same reasons discussed in the paragraphs above.

The Coast Guard and EPA request comments on this temporary interim rule, and will consider all material received as well as any evidence obtained from the field in order to determine whether any changes to this rule are necessary. The Coast Guard and EPA will perform the first such consideration of all

material and evidence at the close of the comment period, and will then consider any new or additional material and evidence every 30 days thereafter.

The Coast Guard and EPA have coordinated on this emergency temporary interim rule because many oil spill response plans address both Coast Guard and EPA oil spill response requirements. Similarly, many regulated entities utilize the same oil spill response assets for oil spill response plans to comply with Coast Guard and EPA oil spill response requirements. Additionally, States are authorized by Federal law to establish oil spill response standards more stringent than the Coast Guard and EPA. The Coast Guard and EPA, based on their roles and responsibilities under 40 CFR 300.175, will coordinate and consult with Regional Response Teams and Area Committees, which include State representatives, regarding the need to suspend Coast Guard and EPA response time requirements, and EPA response equipment identification and location requirements, as discussed below.

A. Basis and Purpose

A major feature of the National Response System under the Federal Water Pollution Control Act (FWPCA) (codified at 33 U.S.C. 1251 et seq.) is the requirement that owners and operators of facilities and vessels have approved response plans that identify and ensure the availability of personnel and

equipment, by contract or other approved means, to remove to the maximum extent practicable a worst case discharge or to mitigate or prevent a substantial threat of such a discharge. Coast Guard implementing regulations establish three levels of specific response resources and response times for: (1) a worst case discharge (USCG-regulated facilities and vessels WCD), (2) a maximum most probable discharge (MMPD), and (3) an average most probable discharge (AMPD). See 33 CFR parts 154 and 155. EPA implementing regulations under the FWPCA provide for oil spill responses at similar levels: (1) a worst case discharge to the maximum extent practicable (EPA-regulated facilities WCD), (2) discharges greater than 2,100 gallons and less than or equal to 36,000 gallons or 10 percent of the capacity of the largest tank at the facility, whichever is less, provided that this amount is less than the worst case discharge (Medium Discharge), and (3) a discharge of 2,100 gallons or less, provided that this amount is less than the worst case discharge amount (Small Discharge). See 40 CFR part 112, subpart D.

Currently, there is an urgent need to maximize the availability of oil spill response assets in the U.S. for use in responding to the unprecedented and ongoing Deepwater Horizon SONS. Those assets are needed in the Gulf region for the response to the Deepwater Horizon SONS. Therefore, the Coast Guard is temporarily releasing facilities and vessels subject to

33 CFR parts 154 and 155, and the EPA is temporarily releasing facilities subject to 40 CFR part 112, subpart D, who own or have under contract response resources deployed in support of the response to the Deepwater Horizon SONS from Coast Guard and EPA regulatory response time requirements, and EPA equipment identification and location requirements, that would otherwise preclude them from relocating owned response resources or releasing contracted response resources to be moved to the Gulf region.

Some facilities and vessels subject to 33 CFR parts 154 and 155, and some facilities subject to 40 CFR part 112, subpart D, contract with OSROs for the availability of oil spill response resources to comply with Coast Guard and EPA regulatory requirements. These contractual obligations keep OSROs from making their response resources available for the response to the Deepwater Horizon SONS. Other such facilities and vessels have their own response resources to comply with these regulatory requirements, and these requirements make the facilities and vessels unable to make their response resources available for the response to the SONS. The Coast Guard and EPA are encouraging an increase in available response resources for the response to the SONS by temporarily releasing these facilities and vessels from the Coast Guard and EPA regulatory response time requirements, and EPA response equipment

identification and location requirements, if and only if they have had their own or contracted response resources relocated to the Gulf of Mexico in support of the response to the Deepwater Horizon SONS.

Section 1321(j)(5)(D)(iii) of 33 U.S.C. requires the identification and the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge. Existing facility and vessel response plans must adequately plan for a worst case discharge to comply with § 1321(j)(5)(D)(iii), as well as additional regulatory requirements under 33 CFR parts 154 and 155 and/or 40 CFR part 112, subpart D. Those regulatory requirements include response times for response resources to respond to incidents of varying degree. Response plans remain in effect as statutorily required by § 1321(j)(5)(D)(iii). The Coast Guard is temporarily suspending only the regulatory response time for those assets to respond to a USCG-regulated facilities and vessels WCD or a MMPD under the facility or vessel response plan, and the EPA is temporarily suspending only the regulatory response time requirements, and response equipment identification and location requirements, for those assets to respond to an EPA-regulated facilities WCD or Medium Discharge under the facility response

plan, because of the unique challenges posed by the Deepwater Horizon spill.

Section § 1321(j)(5)(D)(iii) also requires that these response resources be ensured "by contract or other means." Because contractual agreements between facility and vessel owners and OSROs are not the only way to satisfy the requirements of § 1321(j)(5)(D)(iii), the Coast Guard and EPA are encouraging facilities and vessels to release OSROs under such contractual obligations to provide response resources within specified response times above the AMPD level and/or the Small Discharge level when those OSROs' response resources are deployed in response to the Deepwater Horizon SONS, and instead to prepare for USCG-regulated facilities and vessels WCDs and MMPDs and/or EPA-regulated facilities WCDs and Medium Discharges through "other means," including cascade planning. The unique challenges posed by the Deepwater Horizon spill make "other means" more appropriate to ensure such capability while providing urgently needed response resources in the Gulf of Mexico.

Additionally, the Coast Guard and EPA believe this rule meets the intent of 33 U.S.C. 1321 (j)(5)(A) both in terms of dealing, to the maximum extent practicable, with the catastrophic emergency presented by the Deepwater Horizon SONS, and in terms of meeting, to the maximum extent practicable, the

potential worst case discharge in all other locations. Response resources located outside the Gulf of Mexico region are urgently needed in the Gulf region to assist in the Deepwater Horizon SONS response. The urgent need to use these assets in response to the Deepwater Horizon SONS affects what is the "maximum extent practicable."

The phrase "maximum extent practicable" is not defined in the FWPCA. The phrase, however, is defined in Coast Guard regulations for use in 33 CFR parts 154 and 155 to mean "the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the criteria [in Coast Guard regulations addressing oil spill response plans for facilities and vessels] or in a specific plan approved by the cognizant COTP." See 33 CFR 154.1020. This rule temporarily suspends the response time requirements for 33 CFR parts 154 and 155, which in effect amends the regulatory definition of "maximum extent practicable" to exclude response time requirements for MMPD and USCG-regulated facilities and vessels WCD. The phrase is defined in EPA regulations for use in 40 CFR part 112 to mean "within the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It includes the planned

capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in § 112.20 or in a specific plan approved by the Regional Administrator." See 40 CFR 112.2. This rule temporarily suspends the response time requirements, and response equipment identification and location requirements, for 40 CFR part 112, which in effect amends the regulatory definition of "maximum extent practicable" to exclude response time requirements for Medium Discharges and EPA-regulated facilities WCD.

Therefore, from [INSERT DATE OF PUBLICATION OF THIS RULE] through December 31, 2010 (or such other date as may be established by publication in the Federal Register after the effective date of this rule):

- Oil spill and facility response plan holders need not require response times for MMPD and USCG-regulated facilities and vessels WCD levels, and need not require response time requirements and response equipment identification and location requirements for Medium Discharge and EPA-regulated facilities WCD levels when their existing plans and contracts for response resources will be impacted due to providing response resources in support of the Deepwater Horizon SONS so that meeting those response requirements is impossible. The Coast Guard and

EPA will allow greater use of cascade plans which, in combination, will protect ports and coastlines to the MMPD and USCG-regulated facilities and vessels WCD levels and to Medium Discharge and EPA-regulated facilities WCD levels; and

- Owners of facilities and vessels with contracts with OSROs are encouraged to relieve those OSROs of their responsibility to respond to MMPD and USCG-regulated facilities and vessels WCD levels and to Medium Discharge and EPA-regulated facilities WCD levels within the required response times under such contracts when those OSROs' response resources are deployed in response to the Deepwater Horizon SONS.

The Coast Guard and EPA response time requirements, and EPA identification and location requirements, for response resources for an AMPD and/or Small Discharge, as applicable, remain in effect, except for installations of the Armed Forces that relocate spill response assets to the Gulf of Mexico in response to the FOSC's request for assets. Those installations are authorized to drop below the Coast Guard and EPA response time requirements, and EPA response equipment identification and location requirements, for response resources for an AMPD and/or a Small Discharge, as applicable.

The intent of this rule is to make available more response resources for use in responding to the Deepwater Horizon SONS. When the FOSC makes a request for response resources, the FOSC will coordinate with the cognizant Captains of the Port (COTPs), Regional Response Teams, Area Committees, EPA and the National Incident Commander in order to consider the relative environmental and other risks and impacts of requesting and accepting offers for specific response resources from locations outside the Gulf of Mexico.

This action is supported by 33 U.S.C. 1321(c) and (j), and is promulgated under 33 U.S.C. 1321(j)(5)(A).

B. Discussion of Coast Guard Rule

This rule adds to Coast Guard regulations a temporary, new § 154.T150 to 33 CFR part 154, and a temporary, new § 155.T150 to 33 CFR part 155. Paragraph (a) of the temporary sections sets forth applicability of each section. These sections only apply to facilities and vessels that have contracted response resources, or their own response resources, that are deployed to participate in the Deepwater Horizon SONS response.

Paragraph (b) of the temporary sections suspend the regulatory response time requirements for (1) MMPD and (2) USCG-regulated facilities and vessels WCD. Paragraph (b) suspends these requirements only from [INSERT DATE PUBLICATION OF THIS RULE] through December 31, 2010. Except as described in

paragraph (d), paragraph (c) of the temporary sections makes clear that the response time requirements for AMPD remain in effect for all facilities and vessels regulated by 33 CFR Parts 154 and 155.

In addition to OSROs and facilities and vessels regulated by 33 CFR Parts 154 and 155, Armed Forces installations have response resources that are needed to respond to the Deepwater Horizon SONS. Paragraph (d) of § 154.T150 confirms that the FOSC has requested that the Armed Forces relocate response assets to support the SONS response, and authorizes Armed Forces installations responding to such a FOSC request to revise their response times below what is necessary for an AMPD in order to make the urgently needed response resources of Armed Forces installations available for deployment in support of the SONS response.

Armed Forces installations are more able than private facilities and vessels to mitigate their own risk of delayed response times and take advantage of any cascade planning, if they relocate response resources to assist in the response to the Deepwater Horizon SONS. The National Contingency Plan at 40 CFR 300.175(b)(4) specifically authorizes the Department of Defense "consistent with its operational requirements and upon request of the [F]OSC, provide locally deployed U.S. Navy oil spill equipment and provide assistance to other federal agencies

on request." Because of the inherent mobility of the Armed Forces, an Armed Forces installation could more quickly return response resources to the original installation, if necessary, than an individual, private facility or vessel. Additionally, an Armed Forces installation provides its own response resources, which are dedicated to that installation, compared to a facility or vessel that relies on one or more OSROs to provide response resources which are also contracted to other facilities or vessels. Therefore, the FOSC has requested that Armed Forces installations relocate response resources to the urgent situation in the Gulf of Mexico as set forth in this temporary interim rule.

C. Discussion of EPA Rule

This rule adds to EPA regulations a temporary, new § 112.22 to 40 CFR part 112. Paragraph (a) of the temporary section sets forth the applicability of this section. This section only applies to facilities that have contracted response resources, or their own response resources, that are deployed to participate in the SONS response.

Paragraph (b) of the temporary section suspends the regulatory requirements for response times and the identification of response equipment and its location for (1) Medium Discharges and (2) EPA-regulated facilities WCDs.

Paragraph (b) suspends these requirements only from [INSERT DATE

PUBLICATION OF THIS RULE] through December 31, 2010. Paragraph (b) also states that changes to facility response plans due to relocation of response equipment in support of the response to the Deepwater Horizon SONS are not required. Except as described in paragraph (d), paragraph (c) makes clear that the response times for Small Discharges remain in effect for facilities regulated by 40 CFR Part 112.

In addition to facilities regulated by 40 CFR Part 112, Armed Forces installations have response resources that are needed to respond to the Deepwater Horizon SONS. Paragraph (d) of § 112.22 authorizes Armed Forces installations responding to a FOSC request to support SONS response to revise their response times below what is necessary for a Small Discharge in order to make the urgently needed response resources of Armed Forces installations available for deployment in support of the SONS response. The National Contingency Plan at 40 CFR 300.175(b)(4) supports this provision for the Armed Forces.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

This temporary interim rule is in response to an emergency situation and the Coast Guard and EPA must act more quickly than

normal review procedures under Executive Order 12866, Regulatory Planning and Review. In accordance with section 6(a)(3)(D) of that Order, the Coast Guard and EPA have communicated with the Office of Management and Budget. The rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

This rule will temporarily suspend Coast Guard and EPA response time requirements, and EPA response equipment identification and location requirements, for facilities and vessels subject to 33 CFR parts 154 and 155 and/or 40 CFR 112, subpart D, as applicable. The suspension of these regulatory requirements provides industry and government the opportunity to relocate oil spill response resources to the Gulf of Mexico to aid in the response to the Deepwater Horizon SONS. There may be additional costs for relocating these resources.

If OSROs, or facilities or vessels with their own response resources, temporarily relocate infrastructure and assets to the Gulf of Mexico, other regions may not have the same level of response times for response resources available in the event an oil spill occurred in those other regions. This may marginally increase the risk of delayed response times in those areas because there would be fewer assets immediately available for

spill response. However, we expect these risks to be temporary and small, because the suspension of certain response time requirements is only until the end of this calendar year, and the Coast Guard and affected industry stakeholders will coordinate the positioning and deployment of additional response assets in the Gulf of Mexico.

Additionally, if planned-for response resources have relocated to the Gulf of Mexico, cascade plans can be used to help minimize the risk of delayed response times. A cascade plan contains an OSRO's strategy to maximize arrival times and the availability of response resources for plan holders given the deployment of response resources. This strategy may include the identification of secondary or cascading resources through increased partnerships and the increased pooling of resources among several OSROs and other stakeholders. Coast Guard COTPs will assist in facilitating the incorporation of Armed Forces installations into cascade plans when revising their respective Area Response Plans. The inclusion of Armed Forces installations in cascade planning may be necessary to provide Armed Forces installations that have temporarily revised their response times below that necessary for an average most probable discharge and/or a Small Discharge with access to additional response resources. The inclusion of Armed Forces installations in cascade planning will also allow Coast Guard regulated

facilities and vessels to access remaining Armed Forces installation response resources in the event they are needed.

Additional assets are urgently needed in the Gulf region for the response to the unprecedented and ongoing Deepwater Horizon SONS. Current assets in the Gulf region have been fully utilized in response to the SONS. Based on the urgent need to maximize the availability of oil spill response assets from around the country, the Coast Guard is temporarily releasing facilities and vessels subject to 33 CFR parts 154 and 155, and the EPA is temporarily releasing facilities subject to 40 CFR part 112, subpart D, whose response plans are impacted by relocation of response resources in support of the response to the Deepwater Horizon SONS, from Coast Guard and EPA regulatory response time requirements, and EPA response equipment identification and location requirements, that would keep OSROs, and facilities with their own response resources, from relocating their response resources to the Gulf region. Some facilities and vessels subject to 33 CFR parts 154 and 155, and some facilities subject to 40 CFR part 112, subpart D, contract with OSROs for the availability of response resources to comply with these required regulatory response times. These contractual obligations keep OSROs from making their response resources available for the response to the SONS. Other such facilities and vessels have their own response resources to

comply with these regulatory requirements, and these requirements preclude the facilities and vessels from making their response resources available for the response to the SONS. By releasing these facilities and vessels from the required Coast Guard and EPA regulatory response times, and EPA response equipment identification and location requirements, the Coast Guard and EPA are encouraging owners and contracting facilities and vessels to make more response resources available for the response to the SONS. This will allow these additional response resources from these areas to begin being brought into the Gulf of Mexico to respond to the SONS.

B. Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard and EPA determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard or EPA, call 1-888-REG-FAIR (1-888-734-3247). Neither the Coast Guard nor EPA will retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard or EPA.

D. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress

and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, Coast Guard and EPA have made such a good cause finding, including the reasons therefore, and established an effective date of [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]. Coast Guard and EPA will submit a report, as described in § 801(a)(1)(A), containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

F. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We

have analyzed this rule under that Order and have determined that it does not have implications for federalism.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

L. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

M. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary

consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Environment

This is an emergency rulemaking, and in accordance with the Council On Environmental Quality (CEQ) Regulations Implementing the Procedural Requirements of the National Environmental Policy Act (40 C.F.R. parts 1500-1508) and the National Environmental Policy Act of 1969 (NEPA) (43 U.S.C. 4321-4370f), the Coast Guard, with the assistance of EPA, is consulting with CEQ for this action. The Coast Guard, with the assistance of EPA, will continue to consult CEQ as well as the National Oceanic and Atmospheric Administration and other key authorities in order to determine appropriate environmental impact analysis. The Coast Guard and EPA especially invite public comment on environmental

impacts and management of relative risks of this regulatory action to address an immediate environmental need in the context of preparedness to meet potential environmental needs.

List of Subjects

33 CFR Part 154

Alaska, Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements

40 CFR Part 112

Environmental protection, Facility Response Plan, Oil pollution, Oil Spill Response, Oil Spill Removal Organization, OSRO, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 154 and 155 and the EPA amends 40 CFR part 112 as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170.1. Subpart F is also issued under 33 U.S.C. 2735.

2. Add § 154.T150 to read as follows:

§ 154.T150 Temporary Suspension of Requirements to Permit Support of Deepwater Horizon Spill Response.

(a) Applicability. This section applies to --

(1) Any facility described in § 154.100 of this part, that has contracted with any oil spill removal organization (OSRO), as defined in § 154.1020 of this part, if the OSRO's response resources, as defined in § 154.1020 of this part, are deployed in coordination with the On-Scene Coordinator (OSC), as defined in 40 CFR 300.5, in support of the response to the Deepwater Horizon Spill of National Significance; and

(2) Any facility described in § 154.100 of this part, that owns, operates, or has under its direct control, response resources, as defined in § 154.1020 of this part, deployed in coordination with the OSC, as described in 40 CFR 300.5, in support of the response to the Deepwater Horizon Spill of National Significance.

(b) Suspension of certain response time requirements. From [INSERT DATE OF PUBLICATION OF THIS RULE] through December 31, 2010, the stipulated response times, including the response times contained in any written contractual agreement with any

OSRO, for the availability of response resources, as defined in § 154.1020 of this part, for a maximum most probable discharge and a worst case discharge are not necessary to meet the requirements of this part.

(c) Other response time requirements still effective. Any response time requirements for the availability of response resources, as defined in § 154.1020 of this part, for an average most probable discharge, as required by this part, remain in effect.

(d) Armed Forces installation planning factors. The Coast Guard authorizes the Armed Forces to revise Armed Forces installation response times to below that which is necessary to respond to an average most probable discharge at those installations that have deployed assets in support of the response to the Deepwater Horizon Spill of National Significance in response to a request from the OSC, as described in 40 CFR 300.5, for such assets.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION

REGULATIONS FOR VESSELS

3. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Section 155.490 also issued under section 4110(b) of Pub. L. 101-380. Sections 155.1110 through

155.1150 also issued under 33 U.S.C. 2735.

4. Add § 155.T150 to read as follows:

§ 155.T150 Temporary Suspension of Requirements to Permit Support of Deepwater Horizon Spill Response.

(a) Applicability. This section applies to --

(1) Any ship and any tank vessel described in § 155.100 of this part, that has contracted with any oil spill removal organization (OSRO), as defined in § 155.1020 of this part, if the OSRO's response resources, as defined in § 154.1020 of this part, are deployed in coordination with the On-Scene Coordinator (OSC), as defined in 40 CFR 300.5, in support of the response to the Deepwater Horizon Spill of National Significance; and

(2) Any ship and any tank vessel described in § 155.100 of this part, that owns, operates, or has under its direct control, response resources, as defined in § 155.1020 of this part, deployed in coordination with the OSC, as defined in 40 CFR 300.5, in support of the response to the Deepwater Horizon Spill of National Significance.

(b) Suspension of certain response time requirements. From [INSERT DATE OF PUBLICATION OF THIS RULE] through December 31, 2010, the stipulated response times, including the response times contained in any written contractual agreement with any OSRO, for the availability of response resources, as defined in § 155.1020 of this part, for a maximum most probable discharge

and a worst case discharge are not necessary to meet the requirements of this part.

(c) Other response time requirements still effective. Any response time requirements for the availability of response resources, as defined in § 154.1020 of this part, for an average most probable discharge, as required by this part, remain in effect.

TITLE 40—PROTECTION OF ENVIRONMENT

PART 112—OIL POLLUTION PREVENTION

5. The authority citation for part 112 continues to read as follows:

AUTHORITY: 33 U.S.C. 1251 et seq.; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

6. Add § 112.22 to read as follows:

§ 112.22 Temporary Suspension of Response Planning Level Requirements to Support Deepwater Horizon Spill Response.

(a) Applicability. This section applies to any person who owns or operates--

(1) Any facility described in § 112.20 of this part, who has contracted with any oil spill removal organization (OSRO), as defined in § 112.2 of this part, where the OSRO's response resources, as required under 112.20(h)(3) and Appendix E, Sections 4.0 and 5.0, are deployed in support of the response to the Deepwater Horizon Spill of National Significance; and

(2) Any facility described in § 112.20 of this part, who owns, operates, or has under direct control, response resources, as required under 112.20(h)(3) and Appendix E, Sections 4.0 and 5.0, deployed in support of the response to the Deepwater Horizon Spill of National Significance.

(b) Suspension of certain response planning level requirements. From [INSERT DATE OF PUBLICATION OF THIS RULE] through December 31, 2010, facility response plan requirements relating to the identification of response equipment and its location and the stipulated response times, including the response times contained in any written contractual agreement with any OSRO, for the availability of response resources, as required under § 112.20(h)(3) and Appendix E, Sections 4.0 and 5.0, for a medium discharge as described in § 112.20(h)(5)(iii) of this part, and for a worst case discharge over 2,100 gallons as described under § 112.20(h)(5)(i), are suspended. Changes to facility response plans due to relocation of response equipment in support of the response to the Deepwater Horizon Spill of National Significance, do not require a revision under § 112.20(d).

(c) Other response time and response equipment identification and location requirements still effective. Response times and response equipment identification and location requirements required under § 112.20(h)(3) and Appendix E, Section 3.0 for a

small discharge, as described in 112.20(h)(5)(ii), remain in effect.

(d) Armed Forces installation planning factors. Armed Forces may revise Armed Forces installation response times and response equipment identification and location requirements below that which is necessary to respond to a small discharge, as described in 112.20(h)(5)(ii), at those installations that have deployed assets in support of the response to the Deepwater Horizon Spill of National Significance in response to a request from the On-Scene Coordinator, as defined in 40 CFR 300.5, for such assets.

Dated: June 28, 2010.

Robert Papp
Admiral, U.S. Coast Guard
Commandant

Lisa P. Jackson
Administrator,
U.S. Environmental Protection
Agency

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